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No. 00-1406

In the

Supreme Court of the United States

CHEVRON U.S.A., INC.,

Petitioner,

v.

MARIO ECHAZABAL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CALIFORNIA MANUFACTURERS AND TECHNOLOGY ASSOCIATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a person who is unable to carry out the essential functions of a job without incurring significant risks to the person's own health or life is a "qualified individual" who satisfies the "qualification standards" for that job within the meaning of the Americans with Disabilities Act.

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INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37.3, Amici Pacific Legal Foundation and the California Manufacturers and Technology Association respectfully submit this brief amicus curiae in support of the Petitioner.[1] Written consent for amicus participation in this case was granted by counsel of record for all parties and lodged with the clerk of this Court.

Amicus Pacific Legal Foundation (PLF) is the largest and most experienced nonprofit public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. PLF litigates nationwide in state and federal courts with the support of thousands of citizens from coast to coast. PLF has participated in numerous cases before this Court concerning statutory interpretation of federal laws in cases raising significant public interest concerns.

Amicus California Manufacturers and Technology Association (CMTA) is a mutual benefit, nonprofit, nonpartisan corporation established in 1918 to effectuate communication between its members and state policymakers and the courts about issues which affect the interests of manufacturers. The membership of CMTA is comprised of more than 700 companies that employ approximately 70% of the manufacturing workforce in the state of California.

CMTA believes that the decision of the court below adversely affects the interests of its members by discounting their legitimate—and legally enforceable—policies regarding

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[1] Pursuant to Supreme Court Rule 37.6, Amici Curiae affirm that no counsel for any party in this case authored this brief in whole or in part; and, furthermore, that no person or entity has made a monetary contribution specifically for the preparation or submission of this brief.

worker safety. CMTA believes it is critical for this Court to clarify the standards under which employers may consider safety-based job qualifications in the implementation of the Americans with Disabilities Act (ADA).

Amici seek to augment the arguments of Petitioner by further illustrating how segments of the public not before this Court will be affected by the outcome of this litigation. Amici believe their perspective will provide a unique viewpoint on the issues presented and that this additional viewpoint will aid this Court in evaluating the merits of this case.

STATEMENT OF THE CASE

Respondent Mario Echazabal was an employee of a company called Irwin Industries, Inc., which did subcontract work for Chevron at its coker plant in El Segundo, California. *Echazabal v. Chevron USA, Inc.*, 226 F.3d 1063, 1065 (9th Cir. 2000). In 1992, Echazabal applied for a job as a "plant helper" directly with Chevron. *Id.* at 1071. Chevron tendered an employment offer to Echazabal contingent upon his passing the company's physical exam. *Id.* at 1065. The physical exam revealed that Echazabal had a liver abnormality. *Id.* Because the plant helper position in the coker plant would expose Echazabal to toxic chemicals that could further damage his liver or, in the event of an accident, fatally injure him, Chevron withdrew its offer. *Id.* Subsequently, doctors diagnosed Echazabal as having chronic active hepatitis C. *Id.* Nonetheless, Echazabal continued to work for the subcontractor at the Chevron plant. *Id.*

In 1995, Echazabal again applied for a job directly with Chevron. *Id.* Again, Chevron tendered an offer contingent upon the results of a medical exam. *Id.* And again, the exam revealed Echazabal's liver problems. *Id.* Accordingly, Chevron withdrew its offer of employment, and further

requested of Echazabal's employer, Irwin Industries, that they remove Echazabal from the coker plant and find him a position where he would not be exposed to liver-toxic chemicals. *Id.* Consequently, Echazabal lost his position at the refinery. *Id.* As a result of these actions, Echazabal filed a complaint with the Equal Employment Opportunity Commission (EEOC), and this suit followed. *Id.*

Echazabal's suit against Chevron and Irwin Industries raised various issues. Relevant here, however, is only one issue: Echazabal's claim under the ADA against Chevron. Chevron defended its actions by asserting that Echazabal was not a "qualified individual with a disability" within the terms of the ADA, and, alternatively, that it was justified because the job would pose a "direct threat" to Echazabal's health. *Id.* at 1066. The district court granted summary judgment for Chevron. *Id.* at 1065.

On appeal, the Ninth Circuit, in a 2-1 decision, reversed. *Id.* at 1072-73. The Ninth Circuit first held that, under the ADA, it was not a defense to liability that a job would pose a threat to the health of the disabled individual; rather, the only rationale on which an employer could justify itself under the "direct threat" defense was if the disabled individual would create a threat to the health or safety of other individuals. *Id.* at 1069. Second, it held that the physical exam requirements of the plant helper job were not legitimate job "qualification standards" within the meaning of the ADA.

This Court granted Chevron's Petition for Writ of Certiorari to resolve a conflict in the circuits on the interpretation of the ADA. Specifically, this Court must resolve whether health conditions can render an individual not a "qualified individual with a disability" for a job and whether "qualification standards" may include health standards that exclude disabled individuals from positions that may expose those individuals to threats to their own health and safety.

SUMMARY OF ARGUMENT

When Congress enacted the ADA in 1990, it was responding to a climate in which the disabled were relegated to second-class citizen status. The disabled often could not access the places and services that able-bodied individuals routinely enjoyed. One of the primary focuses of Congress was in the area of employment. Title I of the ADA was aimed at requiring employers to provide reasonable accommodations to their disabled workers so that these individuals could fully participate in the economic life of the nation.

Congress repeatedly emphasized that the primary roadblock to the ability of the disabled to receive fair treatment was irrational prejudice against those who had disabilities. In this case, however, Petitioner Chevron's decision not to hire Respondent Mario Echazabal was not due to unfounded presumptions about Mr. Echazabal's ability to perform the plant helper job, but was instead due to Chevron's assessment of Mr. Echazabal's health. Because he had hepatitis C, a liver disease, Chevron concluded he was a poor fit for a position that would entail exposure to liver-toxic chemicals. In the decision below, the Ninth Circuit held that Chevron's decision violated Mr. Echazabal's rights under the ADA. In doing so, it essentially ruled that the safety of disabled workers is not a valid employment consideration under the ADA.

Good public policy is advanced by encouraging employers to take appropriate safeguards to protect all of their workers—including disabled workers—from avoidable harms in the workplace. Indeed, both federal and state laws have been passed mandating that employers take affirmative steps to make their workplaces safe and healthful. These public policies would be undermined by an interpretation of the ADA in which employers would be required to ignore the well-being of

disabled individuals, exclusively, in making job-placement decisions. In fact, the Ninth Circuit's interpretation would lead to devastating and nonsensical results, as demonstrated by cases that have already arisen under the ADA and similar laws.

Further, the Ninth Circuit's interpretation of the ADA is not rationally defensible. The language of the ADA does not bar employers from factoring in safety considerations in making employment decisions; thus, the lower court's insistence upon severely limiting the ability of employers to consider worker safety in assessing the job qualifications of its disabled candidates is not justified. Furthermore, barring safety considerations does nothing to further the overall purpose of the ADA in encouraging employers and society at large to eschew biased attitudes toward disabled individuals. Because neither the specific language of the ADA nor the overall purpose of the ADA support the Ninth Circuit's interpretation, it should be reversed.

The goals of the ADA are important, and employers bear significant obligations to ensure that the goals of the ADA are met. However, employers should not be required to ignore their own hiring standards, particularly safety standards, when dealing with disabled employees. Because the decision of the court below is unreasonable and is not supported by the language or the purpose of the ADA, it should be reversed.

ARGUMENT

I

THE NINTH CIRCUIT'S INTERPRETATION RUNS COUNTER TO BROADLY LEGISLATED PUBLIC POLICY AIMED AT PROMOTING WORKER SAFETY, AND WOULD LEAD TO UNCONSCIONABLE RESULTS

Petitioner Chevron was faced with a delicate question: should they hire the Respondent, Mario Echazabal, for a position in their coker plant despite the fact that the position would expose Mr. Echazabal, who has hepatitis C, to particularly acute health risks, including the possibility of death, from liver-toxic chemicals used on the job site? The answer for Chevron was simple enough: of course not. To hire Mr. Echazabal despite the heightened risks due to his liver condition would be nonsensical, irresponsible, and insensitive; moreover, it could lead to exposure to legal liability in the event any adverse health effects came to pass.

Unfortunately for Chevron, however, a decision such as theirs, based on sound and reasonable business and humanitarian concerns, is not a private dealing between private parties, as it once may have been. Instead, hiring decisions by private corporations are subject to myriad federalized concerns, not the least of which is the ADA.

The ADA was enacted in 1990 to help disabled individuals overcome hardships created by their disabilities. Congress focused upon two primary concerns: physical barriers to the full participation of the disabled in mainstream economic life, and social barriers in the form of prejudices and ignorance. Among Congress' stated findings:

> [I]ndividuals with disabilities are a discrete and insular minority who have been faced with

> restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society . . . .

42 U.S.C. § 12101(a)(7) (2001). In response to these findings, Congress intended the ADA to provide a legal mechanism that would eradicate the effects of discrimination based on irrational and unfounded presumptions about the capabilities of disabled individuals. Thus, the ADA encourages, through the threat of civil liability, employers and others to modify their conduct to accommodate disabled individuals.

But there is no indication that Congress intended with the ADA to ignore established public policy in favor of promoting workplace safety by barring employers from applying prudent and reasonable measures designed to enhance and safeguard the safety of its disabled workforce. For example, the House Report specifically noted that the ADA was not intended to undermine OSHA standards:

> The OSHA lead standard, for example, requires that employees exposed to lead be tested periodically to determine the lead level in the employee's blood. If the test shows that lead levels exceed the permissible norm, the employee must be transferred from the exposed workplace to another worksite until the lead level falls below the permissible level. At that point, the employee may return to the original work station.

H.R. Rep. No. 101-485(II), at 74-75, *reprinted in* 1990 U.S.C.C.A.N. at 357. OSHA has no regulation directly relevant to Echazabal's situation. However, it is rather ironic that Congress would acknowledge that OSHA regulations should

prevail above ADA concerns by minimizing the health risks for *all* employees to lead exposures but at the same time require under the ADA that an employer affirmatively ignore a known acute health risk for a disabled employee.

Indeed, there is substantial legislation intended to foster a public policy in favor of employers safeguarding employee health that would be undermined by an interpretation of the ADA requiring Chevron to ignore Mr. Echazabal's well-being. For example, OSHA requires an employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees . . . ." 29 U.S.C. § 654(a)(1). Further, California, in which Chevron's coker plant sits, has a state law providing that "[n]o employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful." Cal. Lab. Code § 6402 (2001). These provisions mandate that employers like Chevron make worker safety one of their primary employment obligations.

The ADA itself enforces the concept that the health and well-being of disabled workers must be part of the employer's calculus in making employment decisions. Specifically, the "reasonable accommodation" requirement demands that employers accommodate disabilities to minimize aggravation of a given disability—even to the point of requiring alternative job placement. For example, a House Report explaining the term "reasonable accommodation" used the example of a painter with a severe allergy to a particular paint, stating that he would be entitled to the "reasonable accommodation" of job reassignment if his position entailed exposure to that paint. *See* H.R. Rep. No. 101-485(III), at 29 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 451-52.

In this case, then, the application of the "reasonable accommodation" requirement would lead to a very peculiar

result. If Chevron were required to hire Mr. Echazabal as a plant helper despite the health risks imposed by his disability, he would seem to be further entitled to "reasonable accommodation" of that disability—including transfer out of the plant helper position to one in which there was no risk of exposure to liver-toxic chemicals. In other words, by its own terms, the ADA requires that employers enable qualified disabled individuals to *avoid* risks associated with their disabilities. By requiring Chevron to ignore Mr. Echazabal's condition in making its hiring decision, the ADA would mandate a patently unreasonable result: Chevron would be bound to employ Mr. Echazabal in an entirely different capacity than the position for which he applied. It therefore makes little sense to force Chevron to hire Mr. Echazabal as a plant helper; if Mr. Echazabal qualifies for the position despite his disability, Chevron would ultimately be put in the position of guaranteeing his employment in some other capacity.

Finally, as the dissenting opinion of the lower court noted, requiring employers to hire disabled individuals despite the risks to disabled individuals themselves would lead to unconscionable results:

> [A] steelworker who develops vertigo can keep his job constructing high rise buildings; a power saw operator with narcolepsy or epilepsy must be allowed to operate his saw; and a person allergic to bees is entitled to be hired as a beekeeper. The possible examples of this Pickwickian ruling are endless.

Echazabal, 226 F.3d at 1074 (Trott, J., dissenting). But while this parade of horribles may seem fanciful, there is a steady stream of real-world examples that point out the absurdity of allowing the Ninth Circuit's ruling to stand.

For example, in *Doe v. New York University*, 666 F.2d 761 (2d Cir. 1981),[2] a woman with a personality disorder reacted to stress by engaging in certain self-destructive acts, including cutting herself and imbibing poison. *Id.* at 766-68. NYU medical school dismissed her when the pressures of medical school caused her to engage in further self-destructive conduct. *Id.* at 767-68. She subsequently sued the medical school under the Rehabilitation Act, alleging that NYU discriminated against her on account of her disability. Under the interpretation adopted by the Ninth Circuit, NYU would have had to stand idly by while Ms. Doe engaged in this behavior, despite knowing that the stress of medical school was the cause of her self-destructive behavior. Though the Second Circuit affirmed the district court's denial of summary judgment for NYU, the court of appeals reversed the grant of a preliminary injunction in Doe's favor, finding that Doe's claim was unlikely to succeed on the merits. *Id.* at 779.

Further, in *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112 African-Americans who grew beards on account of a bacterial disorder that predominately affected African-American men sued the City of Atlanta under Title VII and the Rehabilitation

[2] Of course, *Doe* arose prior to the passage of the ADA, and was instead brought under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2001). However, one of the central themes echoed by Congress in passing the ADA was its intent to extend the protections of the Rehabilitation Act, which applied only to federally funded activities, to all activities of states and private employers. *See* 42 U.S.C. § 12201 (2001); *see also* Statement by President George Bush upon Signing S. 933, 26 Weekly Comp. Pres. Doc. 1165 (July 30, 1990), *reprinted in* 1990 U.S.C.C.A.N. 601. Thus, the facts giving rise to this Rehabilitation Act case may now arise under the ADA, but in many more contexts than those dealing with a federally funded entity.

Act[3] because of its "no beard" policy for its firefighters. *Id.* at 1113-14. The no-beard policy was implemented because the respirators used by firefighters in smoke-filled environments would not properly seal if individuals had facial hair. Under the Ninth Circuit's ruling, the City of Atlanta would have had to adopt a "tough luck" attitude toward these individuals if the lack of a properly functioning respirator resulted in death or injury to these men while fighting fires. The Eleventh Circuit, however, affirmed the grant of summary judgment to the City of Atlanta. *Id.* at 1114.

And in *Bridges v. City of Bossier*, 92 F.3d 329 (5th Cir. 1996), *cert. denied*, 519 U.S. 1093 (1997), after undergoing a physical exam as part of an employment screening process, an individual with hemophilia was denied a position as a firefighter by the City of Bossier. The city provided evidence that, unlike other professions, the job of firefighting, as a rule, involved " 'routine exposure to extreme trauma.' " *Id.* at 331. Under normal circumstances, firefighting is a dangerous job. But under the Ninth Circuit's holding, the City of Bossier would have had to accept callously the fact that one of its firefighters would face extreme danger in matters that could be routinely handled by its other firefighters without hemophilia. The Fifth Circuit, however, found that the individual was not a "qualified individual with a disability." *Id.* at 334-35.

In *Moses v. American Nonwovens, Inc.*, 97 F.3d 446 (11th Cir. 1996), *cert. denied*, 519 U.S. 1118 (1997), an individual with epilepsy, who suffered seizures on the job, was termi- -ed from a position which involved working near fast-moving press rollers, as well as machinery that reached temperatures of 350 degrees. *Id.* at 447-48. The Eleventh Circuit affirmed the district court's grant of summary judgment to the employer, *id.* at 448, but the Ninth Circuit's rule would have mandated that

[3] *See* note 2.

American Nonwovens, Inc., simply ignore Mr. Moses' condition despite the high risk of serious injury to him.

And in *Borgialli v. Thunder Basin Coal Co.*, 235 F.3d 1284 (10th Cir. 2000), an individual who suffered from several psychiatric disorders was discharged from his job as a "blaster"—which entailed working with explosives—when his depressive state induced him to entertain suicidal tendencies. While Mr. Borgialli's position was "inherently dangerous" to himself and others, *see id.* at 1295, the Ninth Circuit's interpretation of the ADA might have required Thunder Basin Coal Co. to sit blithely by despite knowing that the job it held for Mr. Borgialli provided convenient and ready means for him to fulfill his suicidal tendencies.

As these cases demonstrate, any imagined or theoretical scenarios that would lead to absurd results are no more outlandish than real-life situations the lower courts are likely to encounter routinely in ADA litigation. If the Ninth Circuit's decision is affirmed, the results in each of these cases would be put into question. Employers would simply have to ignore the well-being of disabled individuals, *especially*, in making employment decisions, despite their general obligation to take reasonable steps to ensure the safety of *all* of their workers. This is not a reasonable way to implement public policy, and reversing the result in all of these cases would hardly serve the goals of the ADA in aiding disabled individuals, as a group, to earn dignity and respect from employers.

In short, in the ADA, Congress repeatedly referred to its broad overall goal of eradicating irrational or unintentional discrimination against the disabled where simple measures could be taken to enable disabled individuals to participate in mainstream economic life. Congress referred to the fact that the ADA was designed to compensate for

> discrimination [that] often results from false presumptions, generalizations, misperceptions,

> patronizing attitudes, ignorance, irrational fears, and pernicious mythologies.

H.R. Rep. No. 101-485(II), at 30, *reprinted in* 1990 U.S.C.C.A.N. at 311. *See also id.* at 33, *reprinted in* 1990 U.S.C.C.A.N. at 315; *id.* at 40, *reprinted in* 1990 U.S.C.C.A.N. at 322; H.R. Rep. No. 101-485(III), at 45, *reprinted in* 1990 U.S.C.C.A.N. at 468. Here, like the cases cited above, there is no contention or even suggestion that Chevron's application of its health standards to Mr. Echazabal was due to any consideration beyond Chevron's legitimate, sound, and sensible concerns for the general safety of its employees and in providing a safe work environment for all of its workers.

It would not serve the purposes of the Act and, indeed, would undermine numerous state and federal laws that reflect a broad public policy interest in advancing employee and public health and safety, for courts to adopt an interpretation of the ADA under which employers could not properly consider worker safety in filling jobs with disabled individuals. This Court should reverse the decision of the court below and establish that legitimate worker safety standards are job qualification standards that employers may permissibly consider under the ADA.

II

MANDATING THAT EMPLOYERS IGNORE THE SAFETY AND HEALTH OF THEIR WORKERS IS NOT CONSISTENT WITH EITHER THE PURPOSE OR THE LANGUAGE OF THE ADA

Title I of the ADA makes it unlawful for employers to discriminate against the disabled in hiring, discharge, compensation, promotion, training, and virtually every other term of employment. 42 U.S.C. § 12112(a) (2001). However, even Congress recognized that not every disability could be accommodated by every employer in a way that made sense, economically or otherwise. For example, it would be foolish to mandate that fire departments hire paraplegic firefighters and bus companies hire blind drivers. Thus, it inserted language into the Act intended to circumvent applications of the law that would bring about absurd results. Unfortunately, Congress' attempt to craft a law that would apply perfectly to every conceivable circumstance has fallen far short of its intended goal. Thus, this Court has been left the unenviable task of divining exactly what Congress intended.

This case deals with the question: when may an employer take into account a disability when implementing employee health and safety standards? As explained above, Chevron's decision was based on a straightforward calculation of whether it was desirable to place Mr. Echazabal, given his current state of health, in a job that posed particular health risks to him. But under the ADA, Chevron must eschew its straightforward approach and respond instead by resolving a number of questions dealing with statutory and regulatory terms. Unfortunately, the ADA's terms are not entirely pellucid when applied in a real world context. It is this ambiguity that militates in favor of allowing Chevron to consider work safety standards in employment decisions.

As stated above, the general mandate of Title I is to prohibit employers from discriminating against the disabled. *See* 42 U.S.C. § 12112(a). In order to be protected by Title I, Section 101 states that an individual must be a "qualified individual with a disability." This

> means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, *consideration shall be given to the employer's judgment as to what functions of a job are essential* . . . .

42 U.S.C. § 12111(8) (2001) (emphasis added). Section 103 of the ADA further provides:

> It may be a defense to a charge of discrimination under this Act that an alleged application of *qualification standards, tests, or selection criteria* that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be *job-related and consistent with business necessity*, and such performance cannot be accomplished by *reasonable accommodation*, as required under this title.

42 U.S.C. § 12113(a) (2001) (emphasis added). And subsection (b) of Section 103 states further:

> The term "qualification standards" may include a requirement that an individual shall not pose a *direct threat to the health or safety of other individuals* in the workplace.

42 U.S.C. § 12113(b) (emphasis added).

Thus, Chevron's decision, recast as a studied interpretation of a number of statutes and regulations, was

defended through several legal assertions. First, Chevron argued Mr. Echazabal was not a "qualified individual with a disability" because the job qualifications for its coker plant position included certain physical health requirements that were "essential" to the position in Chevron's judgment. *See* 42 U.S.C. § 12111(8). And second, Chevron asserted that, consistent with EEOC regulations, proper liver functioning was a valid "qualification standard" of the job because: (a) Chevron's physical exam requirement for positions entailing exposure to certain volatile chemicals was "job-related and consistent with business necessity," *see* 42 U.S.C. § 12113(a); (b) the exposure to these chemicals in the plant helper position could not be reasonably accommodated, *see id.*; (c) the physical health requirements of the position were legitimate "safety standards" of the plant helper position, *see* 29 C.F.R. § 1630.2(q); and, finally (d) the position posed a "direct threat" to the health of Mr. Echazabal, *see* 42 U.S.C. § 12113(b); 29 C.F.R. § 1630.2(r) (allowing "direct threat" defense where threat is to disabled individual himself).

The Ninth Circuit rejected all of these arguments. In doing so, it severely limited the circumstances under which safety standards could be applied to disabled individuals. Notwithstanding the general language of Sections 101 and 103, the court relied exclusively upon Section 103(b), the "direct threat" provision, as the sole defense upon which Chevron could rely. This holding was consistent with EEOC's interpretation of the Act that safety standards may never be analyzed under Section 103(a), but may only be considered a "qualification standard" under Section 103(b)'s "direct threat" defense. *See* 29 C.F.R. § 1630, app. 1630.15(b), (c). However, as this Court noted in *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 569 & n.15 (1999), it is not clear that this view, under which all safety standards must meet the "direct threat" test, is a valid interpretation of the Act. Indeed, some courts have rejected that interpretation. *See, e.g., Equal Employment*

Opportunity Commission v. Exxon Corporation, 203 F.3d 871, 873 (5th Cir. 2000) ("[S]afety requirements are not exclusively cabined into the direct threat test."). Furthermore, the Ninth Circuit adopted a hypertechnical reading of Section 103(b), and, despite EEOC regulations, construed the Act such that employers could only disqualify disabled individuals for safety-related concerns when an individual poses a "direct threat" to third parties, but not the disabled individual himself. *Echazabal*, 226 F.3d at 1066 n.2. *See* 29 C.F.R. § 1630.2(r). As a result, this Court is now presented with the issue of whether, under any reading of the ADA, safety standards may be considered "qualification standards" under Section 103.

Despite the broad language of Section 103(a), the lower court held that the term "qualification standard" in Section 103(a) meant Chevron could only consider whether Mr. Echazabal possessed the physical ability to perform the mechanical aspects of the job, regardless of the unique safety considerations imposed by the workplace. This is a "'narrowly technical and impractical construction' " of Section 103(a). *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 255 (1971) (citation omitted). "In a statutory construction case, the beginning point must be the language of the statute . . . ." *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992). Here, the language of the ADA provides ample leeway for Chevron to consider worker safety in employment decisions. In Chevron's judgment, passing the physical exam was an "essential" part of the job position, and Chevron applied its health criteria as a job "qualification standard." *See* 42 U.S.C. §§ 12111(8); 12113(a).

Safety concerns must be considered a legitimate aspect of any job. *See* 29 C.F.R. § 1630.2(q); 42 U.S.C. § 12113(b). *See also* 29 U.S.C. § 654 (2001) (OSHA, requiring employers to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to

his employees . . . ."); *Dothard v. Rawlinson*, 433 U.S. 321, 331 n.14 (1977) ("[A] discriminatory employment practice must be shown to be *necessary to safe and efficient job performance* to survive a Title VII challenge.") (Emphasis added.); *see also Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1119 (11th Cir. 1993) ("[P]rotecting employees from workplace hazards is a goal that, as a matter of law, has been found to qualify as an important business goal . . . ."). Safety is a legitimate factor to consider in interpreting the terms "essential job functions" and "qualification standards."[4]

If, as the Ninth Circuit ordered, the ADA requires companies to ignore acute health risks facing disabled individuals in their hiring decisions, it is hard to see how the goals of the ADA are advanced. Forcing Chevron to offer the plant helper position to Mr. Echazabal has nothing to do with encouraging employers to eschew mistaken notions about the abilities of disabled individuals, or eliminating barriers which can be overcome by reasonable accommodation. Chevron's employment decision regarding Mr. Echazabal was not based upon assumptions or myths, but on a factual assessment of his physical condition vis-a-vis the particular job to which he aspired. In the interest of safeguarding *every* employee's well-being, Chevron employed a policy of barring those with particular health conditions from undertaking positions in which those conditions presented unusual health risks.

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[4] EEOC has taken the extreme position that safety-standards are almost never valid employment considerations, leading to patently absurd arguments. For example, in *Equal Employment Opportunity Commission v. United Parcel Service, Inc.*, 149 F. Supp. 2d 1115, 1158 (N.D. Cal. 2000), the court observed:

> The EEOC contends that the ability to drive safely is not an essential job function for a truck operator. It says that driving is essential but driving safely is not. This argument is a necessary by-product of the EEOC's strategic view of the business-necessity defense . . . .

As the Ninth Circuit noted, there is evidence Congress believed "employment decisions must not be based on paternalistic views about what is best for a person with a disability." *Echazabal*, 226 F.3d at 1067-68; *see also* H.R. Rep. No. 101-485(II), at 74 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 356. Indeed, this Court has previously expressed general agreement with this sentiment. *See International Union v. Johnson Controls, Inc.*, 499 U.S. 187, 206 (1991). But there is a distinction between paternalism, in which decisions are based on generalized presumptions of what might be best for a group of individuals, and frank assessment of the safety conditions as they relate to a particular individual in the execution of his or her job. Thus, unlike *Johnson Controls*, which involved a policy barring all women of child-bearing age from holding positions involving exposure to lead out of fear of harm to potential fetuses, this is not a case in which an employer applies an across-the-board safety standard that bars a discrete class of individuals from a job because of a potential but remote risk of injury. *See Johnson Controls*, 499 U.S. at 196. While the standard in *Johnson Controls* could legitimately be labeled "paternalistic," in that it was based on general assumptions about what is best for all women and ignored evidence that men encountered comparable health risks, *see id.* at 193, the same cannot be said where the standard applied is based on an actual and particularized evaluation of the health risks involved in a job and the physical condition of a specific job candidate.

In this case, Chevron made an individualized assessment of Mr. Echazabal's health conditions and an impartial assessment of the specific conditions of the position he desired. This is not "paternalism"; this is prudence and conscientiousness. As one court aptly explained the distinction:

> Pernicious myths and prejudices about disabilities often infect employment decisions where an employer regards an individual as having an impairment that renders him unsuited for a wide

> class or broad range of jobs. The same cannot be said of cases where, as here, an employer makes a decision by focusing sharply on whether there is a match between a particular job and an individual with an actual impairment, given the current state of medical knowledge about the impairment. Science, not myths and prejudices, underlie such a decision; it is a rational decision, not an irrational one. Put another way, the ADA seeks only to remedy perceived disabilities "that, like actual disabilities, extend beyond [the] . . . isolated mismatch of [a particular] employer and employee."

Serrano v. County of Arlington, 986 F. Supp. 992, 997 (E.D. Va. 1997) (citation omitted).

Where the plain language employed by Congress in a statute is expansive and unqualified, there is no basis for projecting into the statute a construction that would arbitrarily limit its reach. *See Salinas v. United States*, 522 U.S. 52, 57 (1997); *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 295-96, 297 (1995). This is particularly so if the narrowed interpretation does nothing to advance the purposes of the Act. Congress would not have acted by implication to overrule long-standing, pervasive federal and state public policies mandating the highest regard for worker safety. Accordingly, this Court should reverse the decision of the court below and hold that safety standards may be legitimate "qualification standards" for employment under the ADA.

CONCLUSION

For the reasons stated herein, Amici respectfully request that this Court REVERSE the judgment of the Court below.

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Respectfully submitted,

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